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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act generally revising the civil mental health commitment laws; providing for direct participation of the department of public health and human services in the district court commitment process for persons suffering from mental disorders; providing for commitment to the department for placement rather than directly to a particular facility; clarifying that if a request for hearing on an extension of commitment is made less than ten days before the order of commitment expires, the order is extended until the hearing is held; clarifying that all substantive procedures applying to initial commitments also apply to extensions of commitment; amending sections 53-21-121, 53-21-123, 53-21-126, 53-21-127, and MCA 53-21-128."

Be it enacted by the Legislature of the State of Montana:

Section

1. Section 53-21-102, MCA, is amended to read:

"**53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(4) "Community facility" means any mental health facility other than the state hospital or the Montana mental health nursing care center.

(5) "Court" means any district court of the state of Montana.

~~(5)~~ (6) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(6)~~ (7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(7)~~(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(8)~~ (9) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

- (a) addiction to drugs or alcohol;
- (b) drug or alcohol intoxication;
- (c) mental retardation; or
- (d) epilepsy.

~~(9)~~(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(10)~~ (11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(11)~~ (12)(a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report

abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(12)~~ (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(13)~~ (14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(14)~~ (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(15)~~ (16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(16)~~(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(17)~~(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(18)~~(19) "State hospital" means the Montana state hospital."

{Internal References to 53-21-102:

39-51-2111	41-5-1504	41-5-1504	41-5-1504
41-5-1512	41-5-1512	45-5-206	53-20-130
53-21-105	53-21-106	53-21-106	53-21-138
53-21-411	53-21-601	72-5-408	72-5-415}

Section 1. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment -- contents of -- notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, ~~and~~ any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, and the director of the department, or any person whom the director designates to carry out the director's functions relating to the commitment of persons with mental disorders. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

{Internal References to 53-21-121:
53-21-114* 53-21-129*}

Section 1. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing -- recommendation of professional person.

(1) Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney, ~~and the county attorney,~~ and the director of the department or the director's designee under 53-21-121(3), if the director or the director's designee has requested notice under 53-21-121(3). If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127.

(2) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

{*Internal References to 53-21-123:*
53-21-114* 53-21-129*}

Section 2. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental

disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will

be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The

court may order the trial closed to the public for the protection of the respondent. The director of the department or the director's designee under section 53-21-121(3) may attend the hearing, examine all evidence presented to the court, and present evidence and testimony.

(4) ~~The~~ A professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

{Internal References to 53-21-126:

41-5-1504	41-5-1504	41-5-1504	41-5-1512
53-21-114	53-21-127	53-21-127	53-21-129
53-21-140	53-21-151}		

Section 1. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. The director of the department or the director's designee under section 53-21-121(3) may examine all records of such evaluation and treatment, attend the hearing, examine and present evidence, and make recommendations as to disposition.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) commit the respondent to the custody of the director of the department of public health and human services for placement at the state hospital or other appropriate mental health facility ~~the state hospital~~ for a period of not more than 3 months; or

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 6 months.

(4) Except as provided in subsection (3)(b), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) During the period of commitment to the custody of the director under subsection (3)(a), the director may place or arrange for placement of the respondent in the state hospital, another mental health facility, or in outpatient treatment at a community facility. The director shall immediately give written notice of placement and of any change of placement to the court and to all parties and their counsel. A respondent placed in a community facility shall have the same status as a person released from the state hospital conditioned on the receipt of outpatient care pursuant to 53-21-183.

(6) ~~(5)~~ In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(7) ~~(6)~~ The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate

effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(8) ~~(7)~~ Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b), and may not require commitment to the custody of the director for placement at the state hospital or in an appropriate mental health facility pursuant to subsection 3(a).~~at the state hospital.~~

(9) ~~(8)~~ In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

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(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes commitment to the custody of the director for placement at the state hospital or in an appropriate mental health facility~~a requirement for inpatient treatment~~, the reason commitment to the custody of the director~~inpatient treatment~~ was chosen from among other alternatives; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

{Internal References to 53-21-127:

2-16-503	25-31-602	25-31-602x	25-31-602
25-31-602	25-31-602	27-2-401	27-8-204
37-3-323	37-6-311	37-11-321	37-12-322
41-5-1504	53-21-104	53-21-121	53-21-123
53-21-126	53-21-128	53-21-128	53-21-132
53-21-140	53-21-149	53-21-151	53-21-152
53-21-181	53-21-195	53-21-195	53-21-197
53-21-197	53-21-198	53-21-198	53-21-198
70-19-413	70-29-113	70-29-210	70-29-328}

Section

1. Section 53-21-128, MCA, is amended to read:

"**53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the

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end of the 3-month period of commitment to the custody of the department for placement in the state hospital or an appropriate mental health facility, the state hospital or the period of commitment to a community facility or program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, ~~and the patient's counsel, and the director of the department or the director's designee under section 53-21-121 (3), if the director or the director's designee has appeared in the~~

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matter or requested notice under 53-21-121(3). If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days, not including Saturdays, Sundays and holidays, from the receipt of the request and notify the same people, including the professional person in charge of the patient. When a hearing is requested less than ten days prior to the termination of the previous commitment authority, the previous commitment order is deemed extended until the hearing is held. The notice of hearing shall include notice of this extension. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

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(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127(3) through 53-21-127(9). However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical

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condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

{*Internal References to 53-21-128:*

53-21-140	53-21-181	53-21-195	53-21-195
53-21-197	53-21-197	53-21-198	53-21-198
53-21-198	53-21-414}		

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